BEFORE THE APPEALS BOARD
FOR THE
KANSAS DIVISION OF WORKERS COMPENSATION

BETTY J. PALMER	)	
Claimant	)	
VS.	)	
	)	Docket No. 242,111
LINDBERG HEAT TREATING-BATSON	)	
Respondent	)	
AND	)	
	)	
INSURANCE CO. STATE OF PENNSYLVANIA	)	
Insurance Carrier	)	

ORDER

Respondent and its insurance carrier appealed the March 18, 1999 preliminary hearing order entered by Administrative Law Judge John D. Clark.

ISSUES

This is a claim for a December 24, 1998 injury to the shoulder and neck and any additional injury that occurred while claimant continued to work after that date. After conducting a preliminary hearing on March 18, 1999, the Judge awarded claimant medical and temporary total disability benefits.

Respondent and its insurance carrier contend the Judge erred by finding that claimant's accident arose out of and in the course of employment with the respondent. Claimant was injured on respondent's premises while picking up her paycheck. Respondent and its insurance carrier argue that the accident was not associated with claimant's employment and it did not occur while claimant was engaged in employment activities. Therefore, they contend the accident is not compensable under the Workers Compensation Act.

The only issue before the Board on this appeal is whether claimant's accident arose out of and in the course of her employment with the respondent.

FINDINGS OF FACT

After reviewing the record compiled to date, the Board finds:

1. On December 24, 1998, Betty Palmer tripped and fell on the Lindberg Heat Treating premises where she worked. At the time of the accident, the plant was closed. The sole purpose for Ms. Palmer going to the plant that day was to pick up her paycheck.

2. Ms. Palmer is regularly paid every Friday morning at 7:30 a.m. But, because of the Christmas holiday, the plant was scheduled to be closed on both Thursday and Friday, December 24 and 25, 1998. Therefore, Lindberg planned to distribute its payroll checks on the Wednesday before Christmas. When Ms. Palmer left work at 7:30 a.m. on Wednesday, December 23, the checks had not arrived.

3. Because the checks were late, one of Ms. Palmer's supervisors, Alvin Bruce, scheduled 11:30 a.m. on December 24 to hand out checks to those employees who had not received theirs. Ms. Palmer fell and injured herself immediately after leaving Mr. Bruce's office after picking up her check.

CONCLUSIONS OF LAW

1. The preliminary hearing order should be affirmed.

2. An injury is compensable under the Workers Compensation Act if it arises out of and in the course of employment.[1] The act addresses "arising out of and in the course of employment" in the following "going and coming" rule.[2]

> The words "arising out of and in the course of employment" as used in the workers compensation act shall not be construed to include injuries to the employee occurring while the employee is on the way to assume the duties of employment or after leaving such duties, the proximate cause of which injury is not the employer's negligence. An employee shall not be construed as being on the way to assume the duties of employment or having left such duties at a time when the worker is on the premises of the employer or on the only available route to or from work which is a route involving a special risk or hazard and which is a route not used by the public except in dealings with the employer.

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[1] K.S.A. 1998 Supp. 44-501(a).

[2] K.S.A. 1998 Supp. 44-508(f).

3. The Workers Compensation Act is to be liberally construed to bring both employers and employees within its provisions affording them the protections of the act.[3]

4. When construing statutes, legislative intent is to be determined by considering the entire act. If possible, effect must be given to every part of the act. As far as practicable, the different provisions of the act should be construed to make them consistent, harmonious, and sensible.[4]

5. As a general rule, statutes should be construed to avoid unreasonable results. There exists a presumption that the legislature does not intend to enact useless or meaningless law.[5]

6. The Judge found this accident compensable for preliminary hearing purposes and the Appeals Board agrees. Because Ms. Palmer was injured on Lindberg's premises after picking up her paycheck, the accident arose out of and in the course of employment. Because picking up the paycheck was sufficiently related to Ms. Palmer's employment that it was an incident of employment, the accident arose "out of" her employment. Because she was injured before she left Lindberg's premises, the "going and coming rule" quoted above controls and requires the conclusion that Ms. Palmer had not left her duties before the accident occurred. Therefore, the accident occurred "in the course of" employment.

WHEREFORE, the Appeals Board affirms the March 8, 1999 preliminary hearing order entered by Administrative Law Judge John D. Clark.

IT IS SO ORDERED.

Dated this ____ day of April 1999.

BOARD MEMBER

c: David H. Farris, Wichita, KS
Douglas C. Hobbs, Wichita, KS
John D. Clark, Administrative Law Judge
Philip S. Harness, Director

[3] Chapman v. Beech Aircraft Corp., 258 Kan. 653, 907 P.2d 828 (1995).

[4] KPERS v. Reimer & Koger Assoc.'s Inc., 262 Kan. 635, 941 P.2d 1321 (1997).

[5] KPERS, at 643.